

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN W. CARRINGTON, JR. : CIVIL ACTION
:
v. : 96-2228
:
CITY OF PHILADELPHIA, et al. :

M E M O R A N D U M

Broderick, J.

September 18, 1997

Plaintiff John W. Carrington, Jr. filed this pro se Complaint against the City of Philadelphia and several individual employees of the City of Philadelphia Water Department (collectively "Defendants"). Currently pending before this Court is Defendants' Motion to Dismiss Plaintiff's Complaint. For the reasons stated below, the Court will dismiss Plaintiff's Complaint without prejudice.

The Court has construed Plaintiff's pro se Complaint as alleging a claim of discriminatory discharge on the basis of race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e - 2000-17 ("Title VII"). Plaintiff alleges in his Complaint that he was wrongfully removed from his employment as an equipment operator at the City of Philadelphia Water Department, but he does not state a claim for relief under any particular statute. Moreover, Plaintiff does not state in his Complaint when he was employed at the Water Department or when he was removed from that employment. Plaintiff has, however, attached several documents to his Complaint which apparently

relate to his claim of wrongful employment discharge. These documents include correspondence and work performance reports from the City of Philadelphia Water Department, as well as correspondence from the Equal Employment Opportunity Commission (the "EEOC"). Because the Court holds the allegations of a pro se complaint to "less stringent standards than formal pleadings drafted by lawyers," Haines v. Kerner, 404 U.S. 519, 520-521 (1972), the Court shall consider these attached documents as part of Plaintiff's Complaint. According to these documents, Plaintiff was employed in the Operations Division of the Philadelphia Water Department and he was terminated from that employment in June, 1991. These documents further reveal that, following his discharge from employment at the Water Department, Plaintiff filed a charge of discrimination with the EEOC, alleging wrongful termination on the basis of race. Having examined these documents, and having considered the allegations in Plaintiff's Complaint, the Court has determined that Plaintiff seeks relief under Title VII, and the Court will proceed accordingly.

Before an aggrieved party may initiate an action under Title VII, he must file a charge of discrimination with the EEOC and must obtain from the EEOC a notice of his right to sue. 42 U.S.C. § 2000e-5(f)(1); Seredinski v. Clifton Precision Products Co., 776 F.2d 56, 61 (3d Cir. 1985). Title VII provides that, when a party has filed a charge of discrimination with the EEOC,

and the EEOC dismisses or fails to act on the charge within one hundred eighty (180) days of filing, the EEOC shall notify the party of his right to file suit in federal court. 42 U.S.C. § 2000e-5(f)(1). Title VII further provides that upon receiving notice of his right to sue, the party must file suit within ninety (90) days thereafter. Id.; Mosel v. Hills Department Store, Inc., 789 F.2d 251 (3d Cir. 1986).

Unless equity so requires, the court will dismiss as time-barred those Title VII claims which were filed more than ninety days after the plaintiff received notice of the right to sue. Mosel, 789 F.2d at 253. The Third Circuit has stated that "[w]hile the 90-day rule is not a jurisdictional predicate, in the absence of a recognized equitable consideration, the court cannot extend the limitations period by even one day." Id.

In the instant case, the Court is unable to determine when Plaintiff received notice of his right to sue or whether he ever received said notice. Plaintiff has not made any allegations in his Complaint as to whether he received notice of his right to sue. Plaintiff has attached to his Complaint a letter dated July 29, 1992, which was written by an EEOC Investigator and addressed to Plaintiff. This July 29, 1992 letter states that the investigation of Plaintiff's EEOC charge of employment discrimination is "near conclusion." However, the letter does not provide Plaintiff with notice of his right to sue.

In the absence of any evidence as to when Plaintiff received

notice of his right to sue, or any equitable reason for tolling the ninety day limitations period, the Court will not proceed to adjudicate Plaintiff's claims under Title VII. Accordingly, the Court will dismiss Plaintiff's Complaint without prejudice to Plaintiff filing an amended Complaint which provides some evidence that Plaintiff has received notice of his right to sue and has filed the instant suit within ninety days thereafter, or, in the alternative, which provides some equitable reason why the Court should consider Plaintiff's claims in light of Plaintiff's failure to file said claims within ninety days of receiving notice of his right to sue.

An appropriate Order follows.